

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated July 24, 2015, which denied the Appellant's request for a health supplement - hearing aids. The Ministry found that the Appellant was not eligible for the health supplement because he did not meet the eligibility requirements set out in s.4 of the Employment and Assistance Act and s.26(1) of the Employment and Assistance Regulation (EAR) because he was no longer a recipient of income assistance at the time his request was denied and he was not a person described in s. 67(1) of the EAR or exempted from those requirements.

Further, the Ministry found that the Appellant was not eligible under s.76, EAR because there was no evidence that the Appellant was in receipt of premium assistance under the Medicare Protection Act and because the information submitted did not establish that he faces a direct and imminent life threatening need for hearing aids.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Sections 1, 4

Employment and Assistance Regulation (EAR) Sections 26(1), 67(1), 76; Schedule C, Section 3(a)

PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- A letter from the Appellant to whom it may concern dated April 11, 2015 stating that he is currently employed and has recently been unable to work due to chronic health issues and that he requires hearing aids.
- A copy of a hearing test dated February 24, 2015.
- A copy of a letter to the Ministry from a Registered Hearing Instrument Practitioner dated April 10, 2015.
- A copy of a Hearing Aid Return Form from a medical service provider dated June 2, 2015 stating that the Appellant did not have coverage for hearing instruments through the ministry at that time.
- The Appellant's Request for Reconsideration signed July 8, 2015.
- A copy of a letter to the Ministry from a hearing aid provider dated April 10, 2015, stating that the Appellant has severe hearing loss affecting both ears and that hearing aids would help him get back to work.
- A copy of a Hearing Instrument Form dated May 8, 2015, with a quote for hearing aids in the amount of \$4,000.00.

At the hearing, the Appellant stated that his hearing worsened in January of this year, he was in receipt of medical employment insurance for four weeks, then he applied for income assistance. He stated that he has bilateral neural hearing loss in both ears, with social anxiety and depression related to his condition. He stated that he applied for hearing aids, was denied, then applied again, but he was told that his file had been misplaced, and the Ministry had no record, so he applied again and was told by telephone that his request was approved. In response to questions from the Panel, the Appellant stated that he has had hearing loss for some time, but previously there was no technology to deal with it. He stated that when he received the telephone call advising that his request was approved he went back to his audiologist to have the paperwork resubmitted. He stated that his previous employer was unable to accommodate his hearing loss, so he is no longer able to work there. He has subsequently obtained employment elsewhere. On May 08, 2015 the Prevention and Loss Management Branch (PLMS) initiated a review and on May 11, 2015 the Appellant informed the PLMS he returned to work at the beginning of May 2015. In response to questions from the Panel, regarding the discrepancy with his original letter of April 11, the Appellant explained that he was unable to do the shift work required for his original employer and only worked part-time in April.

The Ministry responded that there is no record in their files of a previous approval of the Appellant's application for hearing aids. The Ministry stated that the Appellant was in receipt of income assistance for part of March, April and May of this year. The decision about his application for hearing aids was made in June, when the Appellant was no longer in receipt of income assistance. In response to questions from the Panel, the Ministry stated that with respect to the statement in the Reconsideration Decision that the Appellant was not eligible in either case, the Ministry stated that the Appellant was not eligible for the health supplement under s.67(1), EAR even if he were a client. The Ministry stated that applications for hearing aids are handled by the medical service provider; the applicant goes to a clinic, and the clinic then applies to the service provider, who approves the request if the applicant is eligible. The Appellant was not eligible because he did not meet the requirements of s.67(1) EAR or exempted categories of persons under policy, and because s.26(1), EAR states that applicants are not eligible for supplements until the minister determines they are eligible. The Ministry stated that the process for approval can take weeks. The Ministry stated that the Appellant was denied based on the effective date of eligibility, but he would not have been approved due to the provisions of s.67(1), EAR.

The relevant dates are as follows:

- The Appellant was determined to be eligible for income assistance on March 25, 2015;
- The Appellant applied for the health supplement on March 26, 2015;
- The Appellant ceased to be a recipient of income assistance in May, 2015; and
- The Ministry determined the Appellant's eligibility for the health supplement on June 2, 2015, when the Appellant was no longer a recipient of income assistance.

PART F – Reasons for Panel Decision

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision which denied the Appellant's request for a health supplement - hearing aids. The Ministry found that the Appellant was not eligible for the health supplement because he did not meet the eligibility requirements set out in s.4 of the Employment and Assistance Act and s.26(1) of the Employment and Assistance Regulation (EAR) because he was no longer a recipient of income assistance at the time his request was denied and he was not a person described in s. 67(1) of the EAR or exempted from those requirements.

Further, the Ministry found that the Appellant was not eligible under s.76, EAR because there was no evidence that the Appellant was in receipt of premium assistance under the Medicare Protection Act and because the information submitted did not establish that he faces a direct and imminent life threatening need for hearing aids.

Legislation

EAA

Interpretation

1(1) In this Act:

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

EAR

Effective date of eligibility

26 (1) Except as provided in subsection (2), (2.01), (2.1), (3.01) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.

(2) A family unit becomes eligible

(a) for a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for income assistance under sections 6 to 10 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form.

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (f).]

General health supplements

67 (1) Subject to subsection (1.1), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who

(a) is a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A if

- (i) any person in the family unit is a person who has persistent multiple barriers to employment, and
- (ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits.
- (iii) Repealed. [B.C. Reg. 57/2007, s. 1.]

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A,

(c) is a dependant of a person referred to in

- (i) paragraph (b),
- (ii) paragraph (f), if the dependant was a dependant of the person on the day the person reached 65 years of age and remains a dependant of that person,
- (iii) paragraph (g), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
- (iv) paragraph (h), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or another member of the person's family unit, and
 - (A) if the dependant is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (B) if the dependant is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(e) is a dependent child of a recipient of income assistance or hardship assistance,

(f) was on the day the person reached 65 years of age

- (i) a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*], 8 [*people receiving special care*] or 9 [*people in emergency shelters and transition houses*] of Schedule A, and
- (ii) eligible for health supplements under section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C,

(g) meets the following requirements:

- (i) has not reached 65 years of age;
- (ii) is a part of a family unit that ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry;
- (iii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance, or

(h) meets all of the following requirements:

- (i) is part of a family unit that ceased to be eligible for income assistance as a result of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or another member of the person's family unit;
- (ii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance;
- (iii) either
 - (A) if the person is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or
 - (B) if the person is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement.

(1.1) A person eligible to receive a health supplement under subsection (1) (c) (ii) or (f) may receive the supplement

- (a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and
- (b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(1.2) A person who was eligible to receive a health supplement under subsection (1) (c) (iv) or (h) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(2) Subject to subsection (3), the minister may provide any health supplement set out in section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C to or for a family unit if the health supplement is provided to or for a recipient in the family unit who

- (a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or
- (b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

- (a) the date the recipient ceases to receive income assistance;
- (b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of

accepting employment.

- (4) A person referred to in subsection (1) (c) (ii), (iii) or (iv), (f), (g) or (h) ceases to be eligible for any supplement under this Division if the person's family unit takes up residence outside British Columbia.

Health supplement for persons facing direct and imminent life threatening health need

76 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) *[general health supplements]* and 3 *[medical equipment and devices]* of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
- (b) the health supplement is necessary to meet that need,
- (c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and
- (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Schedule C

Medical equipment and devices

3 (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if

(a) the supplements are provided to a family unit that is eligible under section 67 *[general health supplements]* of this regulation, and

(b) all of the following requirements are met:

- (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
- (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
- (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.

(2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
- (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the

requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
 - (b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.
- (3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section, that is damaged, worn out or not functioning if
- (a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and
 - (b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.
- (4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.
- (5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if
- (a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and
 - (b) it is more economical to repair the medical equipment or device than to replace it.
- (6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Medical equipment and devices — hearing instruments

3.11 A hearing instrument is a health supplement for the purposes of section 3 of this Schedule if

- (a) the hearing instrument is prescribed by an audiologist or hearing instrument practitioner, and
- (b) an audiologist or hearing instrument practitioner has performed an assessment that confirms the need for a hearing instrument.

The Appellant's position is that he was told that he was approved for hearing aids while he was in receipt of income assistance, but the Ministry misplaced his file. The Appellant argued that he required hearing aids to work because his employer was unable to accommodate his hearing loss.

The Ministry position is that the Appellant's application for hearing aids was not determined until after he was no longer a recipient of income assistance, therefore he was not eligible for the supplement. The Ministry argued that even if the Appellant had been a recipient, his request would have been denied under s.67(1), EAR, because he did not meet the requirements for approval because he is not in any of the categories of persons to whom the health supplement may be provided. The Ministry held that there is no evidence that the Appellant is in receipt of premium assistance under the Medicare Protection Act and the information submitted does not establish that the Appellant faces a direct and imminent life threatening need for hearing aids.

The Panel notes that there is no evidence that the Ministry approved the Appellant's previous request. Section 26(1), EAR deals with the effective date of eligibility for supplements, and states that a family unit is not eligible for supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for it. In the Appellant's case, the determination of his eligibility was made in June, when the Appellant was no longer in receipt of income assistance; therefore the Ministry's determination that the Appellant was not eligible for the health supplement was reasonable, based on the evidence. With respect to s. 67(1), EAR, the Panel notes that even if the Ministry's determination of eligibility had been made while the Appellant was a recipient of income assistance, the Appellant does not fall under any of the categories of person listed in that section or under any of the Ministry's exceptions under policy. The Panel finds that the Ministry reasonably determined that the Appellant was not eligible for provision of the requested supplement under that section, and therefore not eligible under s.3(1) of Schedule C, EAR.

With respect to s.76, EAR, the Panel finds that the Ministry reasonably determined that there is no evidence that the Appellant is receiving premium assistance under the Medicare Protection Act or that the Appellant faces a direct and imminent life threatening need for hearing aids.

The Panel therefore confirms the Ministry decision as reasonably supported by the evidence.